A

KATHAVARAYAN MUNISAMY

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
MOHD GHAZALI YUSOFF JCA
LOW HOP BING JCA
VINCENT NG JCA
[CRIMINAL APPEAL NO: K-05-95-2003]

C

2 SEPTEMBER 2008

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in 937.8 grams cannabis - Appeal against conviction and death sentence - Admissibility of statement - Whether a cautioned statement - Defence - Whether reasonable doubt raised*

D

This was an appeal by the appellant against his conviction and death sentence for the offence of trafficking in 937.8 grams cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). The facts showed that the appellant who was stopped by SP3 (a police officer acting on information) whilst driving his car was found with the said said drugs under the driver's seat. The defence challenged the admissibility of exh. P22 which was information received from the appellant with regards to the said drugs and admitted by the prosecution as evidence. The appellant argued that exh. P22 was inadmissible as it was a cautioned statement and no trial within a trial was held.

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Held (dismissing the appeal)
Per Mohd Ghazali Yusoff JCA:

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(1) The appellant's claim that he was driving a pirate taxi suggesting that any of his passengers could have placed the said drugs underneath the driver's seat was a line of defence suggested for the first time when the defence was called. The learned judge did not dismiss the appellant's claim that he was a pirate taxi driver. He, however, rejected the defence claim about the possibility of a passenger placing the said drugs under the driver's seat. This court agreed with the views expressed by him in doing so. (para 15)

H

I

(2) Exhibit P22 was not a cautioned statement within the contemplation of the DDA. Before the learned judge, the prosecution made it very clear that they were introducing exh. P22 pursuant to s. 27 of the Evidence Act 1950. Exhibit P22 was evidence of information given by the appellant who was an accused in custody and that information was given before the said drugs was taken from the place where it was concealed, *ie*, under the driver's seat and consequently handed to the police. It was a record of the information given by the appellant in his own statement. The learned judge did not accept the appellant's defence that he never supplied the information about the said drugs to SP3 and that he had no knowledge of the said drugs that was placed under the driver's seat of the car. It followed that the learned judge was correct in ruling that exh. P22 was admissible and hence formed part of the prosecution case. (paras 17, 19 & 21)

(3) The evidence before the learned judge showed that the appellant was clearly in possession of the said drugs and the facts showed that the said drugs were in his custody and control. He clearly had knowledge of the said drugs. The said drugs were in excess of 200 grams as provided under s. 37(da)(vi) DDA. That triggered the statutory presumption of trafficking under s. 37(da) DDA. Premised on those facts, the learned judge was correct in finding that a *prima facie* case was made out against the appellant at the conclusion of the prosecution case and called upon him to enter his defence. The defence was a mere denial. The learned trial judge found that the appellant failed to cast a reasonable doubt. After considering all the evidence adduced, the learned judge decided that the prosecution proved its case beyond reasonable doubt and hence found the appellant guilty thereby convicting him of the offence in question. This court found no reason to disturb the findings of the learned judge. (para 23)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu terhadap sabitan dan hukuman mati yang dijatuhkan ke atasnya atas kesalahan mengedar 937.8 gram kanabis di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Fakta menunjukkan bahawa perayu telah ditahan oleh SP3 (seorang pegawai polis yang bertindak atas maklumat yang diterima) setelah kereta yang dipandu perayu didapati mengandungi

A dadah tersebut di bawah tempat duduk pemandunya. Pembelaan mencabar kebolehterimaan eks. P22, iaitu maklumat yang diperolehi dari perayu berkaitan dadah tersebut dan diterimamasuk sebagai bahan bukti. Menurut perayu eks. P22 tidak boleh diterimamasuk memandangkan ia satu kenyataan beramaran dan tiada perbicaraan
B dalam perbicaraan mengenainya diadakan.

Diputuskan (menolak rayuan)
Oleh Mohd Ghazali Yusoff HMR:

C **(1)** Hujah perayu bahawa beliau memandu teksi haram dan mana-mana penumpangnya mungkin telah meletakkan dadah tersebut di bawah tempat duduk pemandu kereta adalah pembelaan yang dikemukakan oleh beliau sebaik sahaja pembelaannya dipanggil. Yang arif hakim tidak menolak pengataan bahawa perayu adalah seorang pemandu teksi haram. Yang arif hakim
D bagaimanapun menolak hujah pembelaan mengenai kemungkinan salah seorang dari penumpang perayu meletakkan dadah di bawah tempat duduk pemandu. Mahkamah ini bersetuju dengan pandangan yang arif hakim dalam dapatannya itu.

E **(2)** Eksibit P22 bukan satu kenyataan beramaran seperti yang dimaksudkan ADB. Di hadapan yang arif hakim, pendakwaan menyatakan dengan jelas bahawa eks. P22 dikemukakan di bawah s. 27 Akta Keterangan 1950. Eksibit P22 adalah keterangan mengenai maklumat yang diberikan oleh perayu
F sebelum dadah tersebut diambil dari tempat di mana ia disorok, iaitu dari bawah tempat duduk pemandu, dan kemudian diserahkan kepada polis. Ia adalah rekod mengenai maklumat yang diberi perayu dalam kenyataannya sendiri. Yang arif hakim tidak menerima pembelaan perayu bahawa beliau tidak
G pernah memberikan maklumat mengenai dadah kepada SP3 dan bahawa beliau tiada pengetahuan mengenai dadah yang diletak di bawah tempat duduk pemandu tersebut. Ianya mengikut bahawa yang arif hakim betul bilamana memutuskan bahawa eks. P22 boleh diterimamasuk dan dengan itu menjadi
H sebahagian kes pendakwaan.

(3) Keterangan di hadapan yang arif hakim menunjukkan bahawa perayu jelas mempunyai milikan dadah tersebut dan fakta juga menunjukkan bahawa dadah tersebut berada dalam jagaan dan
I kawalan beliau. Jelasnya perayu mempunyai pengetahuan mengenai dadah tersebut. Dan oleh kerana dadah tersebut melebihi 200 gram seperti yang diperuntukkan di bawah

s. 37(da)(vi) ADB, maka ia membangkitkan anggapan mengedar di bawah s. 37(da) ADB. Berdasarkan fakta-fakta ini, yang arif hakim betul dalam mendapati bahawa satu kes *prima facie* telah dibuktikan terhadap perayu dan dalam memanggil perayu untuk membela diri. Pembelaan perayu hanyalah penyangkalan semata-mata, dan akibatnya yang arif hakim mendapati perayu gagal membangkitkan apa-apa keraguan munasabah. Selepas menimbang kesemua keterangan yang dikemukakan, yang arif hakim memutuskan bahawa pendakwaan telah membuktikan kes di luar keraguan munasabah dan dengan itu mendapati perayu bersalah dan mensabitkannya atas kesalahan. Mahkamah ini tidak mempunyai alasan untuk mengganggu dapatan-dapatan yang arif hakim tersebut.

Case(s) referred to:
Francis Antonysamy v. PP [2005] 2 CLJ 481 FC ***(refd)***
PP v. Kanapathy Kupusamy & Anor [2001] 1 CLJ 61 HC ***(refd)***
Re Pitchi Muthu [1970] 2 MLJ 143 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37A(1)(b), 37(da)(vi), 39B(1)(a), 39B(2)
Evidence Act 1950, s. 27(1)

For the appellant - RSN Rayer; M/s R Nethaji & Co
For the respondent - Eddie Yeo Soon Chye DPP

[Appeal from High Court, Alor Setar; Criminal Trial No: 45-03-2001]

Reported by Usha Thiagarajah

JUDGMENT

Mohd Ghazali Yusoff JCA:

[1] This is the unanimous judgment of the court.

[2] The appellant was charged in the High Court, Alor Setar with an offence of trafficking of dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ("the Act"), to wit, 937.8 grammes of cannabis and punishable under s. 39B(2) of the same.

[3] At the end of the trial he was found guilty and convicted and was sentenced to death. The appellant appealed to this court. We had dismissed the appeal and our reasons for doing so follows.

The Prosecution's Case

[4] The facts of the case are as follows. On 31 May 2000 at about 10.30pm, acting on information, a group of police personnel led by ASP Mohd Zainal Baharom (SP3) tailed a Proton Saga motorcar bearing registration number PBR 5368 ("the said motorcar") which was being driven by the appellant within the vicinity of Jalan Tengku Bendahara, Alor Setar. There were no passengers in the said motorcar. They then stopped the said motorcar when it turned into Jalan Taman Tunku Abdul Halim, Alor Setar. SP3 identified himself to the appellant and administered the caution under s. 37A(1)(b) of the Act. He then conducted an investigation by first inspecting the identity card of the appellant.

[5] In the course of investigation the appellant took a plastic bag which was kept under the driver's seat and handed it to SP3. Upon examining the plastic bag SP3 found a compressed slab of plant material wrapped in another plastic bag. SP3 also conducted a body search on the appellant and also searched the said motorcar and consequently seized several items found in the said motorcar including a handphone and cash amounting to RM900. He then brought the appellant and the items seized from the appellant including the plastic bag containing the plant material to the Narcotics Department, Ibu Pejabat Polis Kontinjen, Alor Setar ("IPK") where he lodged a police report and prepared a search list with regards to the items seized from the appellant and other items found in the said motorcar. SP3 subsequently handed over the said plastic bag containing the plant material and the other items seized to Chief Inspector Helmi Aris, the investigation officer of the case (SP5).

[6] In the course of investigation, SP5 handed the said plastic bag containing the plant material to Shaharudin Hasan of the Chemistry Department (SP2) for analysis. SP5 confirmed that the plant material found in the said bag was 937.8 grammes of cannabis as defined under s. 2 of the Act ("the said dangerous drugs") .

[7] The appellant was subsequently charged in the High Court, Alor Setar with an offence of trafficking of the said dangerous drugs under s. 39B(1)(a) of the Act.

[8] In the course of trial, SP3 testified that when he questioned the appellant after he had stopped the said motorcar, he received information from the appellant with regards to the said dangerous drugs. When he returned to the IPK, he wrote down the information that he received from the appellant (exh. P22); it read as follows:

> Pada jam lebih kurang 2300 hrs 31/5/2000 bertempat di Jln Utama, Taman Sultan Abd Halim, A/Setar, saya telah membacakan amaran dibawah Sek 37A(1)(b) ADB 1952 (Akta 234) kepada Kathavaran a/l Munisamy K/P No. 490308-02-5015 didalam Bahasa Malaysia dan difahami olih beliau. berbunyi:
>
> Adalah menjadi kewajipan saya untuk memberi amaran kepada kamu bahawa kamu tidaklah diwajibkan menyatakan sesuatu atau menjawab apa-apa soalan, tetapi apa-apa jua yang kamu nyatakan, samada sebagai menjawab sesuatu soalan atau tidak, boleh diberi sebagai keterangan.
>
> Soalan: Adakah anda faham dengan apa telah saya bacakan kepada anda.
>
> J: Ya, saya faham.
>
> S: Adakah apa-apa barang salah yang ada bawa didalam kereta ini?
>
> J: Ya, ada.
>
> S: Bolehkah kamu tunjukkan dimana dlm kereta?
>
> 5
>
> J: Ya, dibawah tempat duduk pemandu.
>
> | t.t. | t.t. |
> | --- | --- |
> | Kathavayaran a/l Munisamy K/P 490308-02-5015 | ASP Mohd Zainal Baharom G/6491. |

[9] Upon the application of the learned deputy public prosecutor and with no objection from counsel for the appellant, exh. P22 was admitted under s. 27 of the Evidence Act 1950 and hence formed part of the case for the prosecution.

[10] At the close of the case for the prosecution, the learned trial judge found that the prosecution had made out a *prima facie* case against the appellant on the charge of trafficking and hence called upon the appellant to enter on his defence.

The Defence Case

[11] The appellant elected to give evidence on oath. In his defence the appellant stated that on 31 May 2000, ie, the day of the incident, he was residing in Kulim. He admitted that the said motorcar belong to him and that he purchased it in June 1999. He claimed that he used the said motorcar as a pirate taxi ("kereta prebet sapu") and on the day of the incident he ferried some passengers to Alor Setar. He then said at about 6.30pm on the day of the incident, he ferried four passengers from "Stesen Bas lama Alor Setar" to Taman Aman, Anak Bukit. After sending the four passengers to Taman Aman he proceeded to his adopted relative's house, whom he referred to as "adik angkat", in Taman Sultan Abdul Halim. When he was about to reach his adopted relative's house, he was stopped by the police. The police officer who stopped him then handcuffed him, searched the said motorcar and took a package from underneath the driver's seat and said "Ini ganja". The police officer showed it to him and he replied "saya tak tahu". He then claimed that the said police officer never questioned him after he was handcuffed. He also claimed that he never showed to the police officer the package that was found under the driver's seat. He further claimed that no caution was ever administered to him. He later clarified that it was on 30 May 2000, ie, the day prior to day of the incident that he ferried passengers from Kulim to Alor Setar and that he did not return to Kulim on that day, ie, 30 May 2000. He further clarified that the said adopted relative is actually his nephew and that his name is Vijay.

[12] The defence called one witness, namely, Sarawana a/l P. Shanmugham (SD2) who testified that on 30 May 2000 the appellant stayed at Vijay's house which was next-door to his house. He also said that in May 2000 the appellant was driving a pirate taxi.

Conclusion Of The Trial

[13] At the conclusion of the trial, the learned trial judge, after considering all the evidence adduced before him, found that the appellant failed to cast a reasonable doubt and concluded that the

prosecution has proved its case beyond reasonable doubt and accordingly found him guilty and convicted him on the charge of trafficking.

The Appeal

[14] Before us, learned counsel for the appellant canvassed the following arguments, namely:

(i) the learned trial judge found that others had access to the said motorcar, namely, that on the day of the incident he had carried four passengers; and

(ii) that exh. P22 was a cautioned statement and no trial within a trial was held; as such it is inadmissible evidence and it remains inadmissible even if it was admitted without any objection from the defence.

[15] We are of the view that there are no merits with regards to the first issue raised. The claim that the appellant was driving a pirate taxi which would entail him to carry passengers in the said motorcar in the course of such vocation only came about during the defence case. We noted that there was a lack of cross-examination of witnesses during the prosecution's case by the defence touching upon its claim that the appellant was using the said motorcar as a pirate taxi and thus would be ferrying passengers who need his services and consequently suggesting that any of his passengers could have placed the said plastic bag containing the said drugs underneath the driver's seat. This line of defence was only suggested for the first time when defence was called (see *Re Pitchi Muthu* [1970] 2 MLJ 143). Be that as it may, the learned trial judge judge did not dismiss the appellant's claim that he was pirate taxi driver. He however rejected the defence claim about the possibility of a passenger placing the said plastic bag containing the dangerous drugs under the driver's seat; in relation to this, he said in his grounds of judgment as follows (pp. 102-103 of the appeal record):

> Persoalan seterusnya adakah keterangan Tertuduh berjaya menimbulkan keraguan yang munasabah kepada kes pendakwaan bahawa cannabis tersebut berada dalam milikan ekslusif *(sic)* Tertuduh iaitu sebenarnya bungkusan yang berisi cannabis itu ditinggalkan oleh penumpang-penumpang yang menaiki keretanya. Saya berpendapat adalah tidak munasabah untuk mempercayai bahawa bungkusan yang mengandungi cannabis itu ditinggal oleh

A salah seorang penumpang tersebut. Ini kerana bungkusan tersebut bukanlah benda yang kecil saiznya untuk penumpang tersebut terlepas pandang. Bungkusan itu pula berada dalam kereta di depan penumpang itu dan bukan berada dalam but kereta. Cannabis itu adalah barang yang bukan senang untuk diperolehi dan mempunyai nilai pasaran yang tinggi jadi tidak munasabah bagi B mana-mana orang yang memilikinya dengan begitu mudah meninggalkan bungkusan itu begitu sahaja.

We would agree with the views of the learned trial judge referred to above.

C

[16] The second issue raised by counsel for the appellant relates to exh. P22 which was introduced by the prosecution pursuant to s. 27(1) of the Evidence Act 1950. Counsel argued that exh. P22 is a cautioned statement and hence is inadmissible as no trial D within a trial was held; s. 27(1) of the Evidence Act reads:

When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates E distinctly to the fact thereby discovered may be proved.

[17] We cannot find any merits with regards to the second issue raised. Exhibit P22 is not cautioned statement within the contemplation of the Act. Before the learned trial judge the F prosecution has made it very clear that they were introducing exh. P22 pursuant to s. 27 of the Evidence Act. Exhibit P22 is evidence of information given by the appellant who is an accused in custody and that information was given before the said plastic bag containing the said dangerous drugs was taken from the place G where it was concealed, ie, under the driver's seat and consequently handed to the police. It is a record of the information given by the appellant in his own statement. Section 27 of the Evidence Act has been dealt with at length by Nik Hashim J (as he then was) in *PP v. Kanapathy Kupusamy & Anor* H [2001] 1 CLJ 61; his Lordship said (at pp. 69-70):

It is clear from authorities that for evidence to be admissible under s. 27 of the EA, there must first be evidence of information given by an accused in custody and that information must be given before the discovery of the fact (see *Public Prosecutor v Basri bin* I *Salihin* [1993] 1 CLJ 420) and such information must relate to the fact discovered. To constitute 'information' under the section,

the information must come from the accused and nobody else. The information must be the accused's own statement in his own language (see *Sarkar On Evidence*, 15 edn 1999 pp. 550, 551).

In *Public Prosecutor v. Toh Ah Keat* [1977] 2 MLJ 87, Hashim Yeop A. Sani (as he then was) at p. 89 said:

> Section 27 of the Evidence Act however deals with a very special type of statement which even if self-incriminatory is nonetheless admissible under that section provided that the **conditions prescribed are strictly complied with.** (emphasis added)

In *Wai Chan Leong v. Public Prosecutor* [1989] 3 MLJ 356, SC, Gunn Chit Tuan SCJ said (at p. 358) that:

> [It] must be borne in mind that for s. 27 of the Evidence Act to apply, the information must be such as has caused the discovery of a fact. In other words the fact must be the consequence and the information the cause of its discovery. Moreover the information must relate distinctly to the fact discovered ...

Further down, he continued:

> It must also be observed that the legislature has used the expression 'information' in s. 27 of the Evidence Act and therefore did not intend it to have the same meaning as a statement. Although that expression is not defined in the Evidence Act, unlike a statement, it includes knowledge derived by the person informed by the accused as well as the means taken to impart that knowledge. (emphasis added)

In *Public Prosecutor v Khoo Boo Hock & Anor* [1990] 1 CLJ 971, Edgar Joseph Jr. J (as he then was) held:

> 1. The prosecution must prove beyond reasonable doubt that the actual questions put to the accused in order to find out precisely what information was intended to be conveyed by the accused, which led to the discovery of the drugs.
>
> 2. A contemporary record of what really passed between the police and accused was of particular importance.

And in *Public Prosecutor v. Tai Mei Yuen* [1990] 1 CLJ 1208, the same learned judge held:

A

> 1. It is trite law that although there is no legal requirement that statement under section 27 of the Evidence Act must be taken down in writing, prudence demands that this is highly desirable.

B **[18]** Another case relating to s. 27 of the Evidence Act is *Francis Antonysamy v. Public Prosecutor* [2005] 2 CLJ 481. In delivering the decision of the Federal Court, Augustine Paul JCA (as he then was) said:

> What therefore remains for consideration is whether the High
C Court ought to have excluded the information supplied by the accused under s. 27 in the exercise of its discretion. As stated earlier the burden of proof on this issue is on the defence. The very evidence that is now being objected to was admitted by the High Court without any objection from the defence. The police officer to whom the information was supplied was not cross-
D examined on this issue when he gave evidence. In the circumstances the evidence of the accused that he did not supply the information in question has very little value with the result that there is insufficient material before the court to exercise the discretion in favour of the accused.

E

> ... The law relating to the admissibility of such information was considered by the High Court in *Public Prosecutor v. Hashim bin Hanafi* [2003] 8 CLJ 555:
>
> > The section provides that '... so much of such information
> F ... as relates distinctly to the fact thereby discovered, may be proved'. It follows that the information that is admissible must relate distinctly to the fact discovered. It was made abundantly clear by the Privy Council *Pulukuri Kotayya & Ors* that it is fallacious to treat the 'fact discovered' as equivalent to the object produced; the fact discovered
> G embraces the place from which the object is produced, and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. The discovery must be the direct cause of the information (see *Jaffer Husain Dastagir v. State of Maharashtra* AIR [1970]
> H SC 1934). Thus the information must relate to the place of concealment of the object and the accused's knowledge of it. What is admissible is therefore information supplied by the accused which relates to the exact location of the object and its subsequent discovery.

I

Since the information supplied by the accused must lead to the discovery of the object it means that the discovery must be of some fact which the police had not previously learnt from other sources and the knowledge of the fact should be first derived from information supplied by the accused (see *Thimma v. State of Mysore* AIR [1971] SC 1871; *Joy v. CI of Police* [1989] 1 KLT 443 (Ker)). Thus the discovery must be made by virtue of and exclusively as a result of information given by the accused (see *Ramjan Das v. State* [1988] 1 Crimes 843). In this regard Nik Hashim J said in *Public Prosecutor v. Kanapathy a/l Kupusamy* [2001] 5 MLJ 20 at p 28:

> To constitute 'information' under the section, the information must come from the accused and nobody else.

If the police have prior knowledge of the information supplied by the accused, obviously the subsequent discovery will be based on such prior knowledge and not on that of the accused. It will thus render the information supplied by the accused inadmissible as it will not be not be the cause of the discovery. It must be remembered that s. 27 is based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information is true, and accordingly can be safely allowed to be given in evidence (see *Pulukuri Kotayya & Ors*). It follows that prior knowledge which will make s. 27 inapplicable must be of such a nature that it must be capable on its own of leading to the discovery of the object. If it does not have that effect then the cause of the discovery will still be the information supplied by the accused and not the prior knowledge of the police. In that event, the information supplied by the accused will be inadmissible as the information that the police have will not amount to prior knowledge. The corollary is that information that the accused has drugs or has hidden the drugs without any further information on their exact location will not amount to prior knowledge. In support, I refer to *Md Desa bin Hashim v. Public Prosecutor* [1995] 4 CLJ 677 where Gopal Sri Ram JCA:

> If an investigating agency has prior knowledge of the whereabouts of the article that is recovered, then the section does not apply.

> The 'whereabouts' of an article is a reference to its exact place of location. In further support, I refer to the Indian Supreme Court case of *Aber Raja Khima v. State of Saurashtra* AIR [1956] SC 217 where it was held that discovery of hidden incriminating articles said to have been recovered by the accused is inadmissible if the police already knew where they were hidden. ... .

[19] With the above authorities in the forefront of our minds in relation to exh. P22 and the evidence before the learned judge, we came to the view that the learned trial judge was correct in ruling that it was admissible. The evidence before the court showed that in the afternoon of the day of the incident, SP3 received information to the effect that an Indian man could be carrying drugs in the said motorcar. After stopping the said motorcar he arrested the appellant and administered the caution under the Act. He then asked the appellant whether he was carrying anything illegal. The appellant answered in the affirmative. Upon being asked whether he can show where it was kept in the said motorcar, the appellant answered in the affirmative and said that it was kept under the driver's seat. The appellant then took the said plastic bag containing the said dangerous drugs concealed under the driver's seat and handed it to SP3. As the place where the incident took place was dark, SP3, immediately upon returning to his office at the IPK put down in writing the information given to him by the appellant. What can be gleaned from the above facts are the following:

(i) the information to SP3 regarding the whereabouts of the said dangerous drugs was given by the appellant who was an accused in custody at that material time;

(ii) SP3 had no prior knowledge of the place where the said dangerous drugs were concealed when he questioned the appellant;

(iii) the information related to the place of concealment of the said dangerous drugs and the appellant's knowledge of it.

[20] In his defence the appellant denied that he gave any information about the said dangerous drugs to SP3 and insisted that he had no knowledge of the plastic bag containing the said dangerous drugs which he insisted was found by the police underneath the driver's seat. This was what he said (pp. 57-58 of the appeal record):

Apabila saya sampai dekat rumah adik saya saya ditahan oleh orang. Selepas dia tahan saya, dia kata dia polis dan dia gari saya di belakang, check kereta itu dan dia ambil keluar satu bungkusan dari bawah tempat duduk pemandu. Dia buka bungkusan itu dan dia kata "Ini ganja". Dia tunjuk kepada saya dan saya kata saya tak tahu.

Selepas saya digari dia tidak ada soal saya. Saya tidak menunjuk ganja itu kepada polis.

Tempat kereta saya ditahan adalah gelap. Saya tak pasti samada ada lampu atau tidak. Polis tidak ada memberi saya apa-apa amaran sebelum menjumpai barang itu. Polis terus ambil barang itu dan bukan terus periksa seluruh kereta dulu. Saya tidak ada memeriksa kereta saya kerana tak sempat. Pada hari itu selain daripada 4 penumpang itu saya ada ambil penumpang lain pada tengah hari. Saya datang dari Kulim ke Alor Setar kerana saya membawa penumpang dari Kulim ke Alor Setar pada 30.5.2000 iaitu satu hari sebelum kena tangkap. Selepas itu saya tidak balik ke Kulim.

Dadah yang dirampas oleh polis itu bukan saya punya. Saya tidak tahu macamana dadah itu berada di dalam kereta saya. Saya tidak ada tunjuk kepada polis tempat dadah itu diletak.

[21] The learned trial judge did not accept the appellant's defence that he never supplied the information about the said dangerous drugs to SP3 and that he had no knowledge of the said dangerous drugs that was placed under the driver's seat of the said motorcar. This was what he said in his grounds of judgment (p. 103 of the appeal record):

Saya juga menolak keterangan Tertuduh bahawa dia tidak memberi maklumat kepada SP3 seperti dalam eksibit P22. Pada pendapat saya tidak ada sebab untuk SP3 mereka-rekakan cerita tentang eksibit P22. SP3 cuma menjalankan tugasnya dan SP3 tidak mengenali Tertuduh sebelum itu. Saya berpushati maklumat tersebut diberi oleh Tertuduh kepada SP3. Eksibit P22 ditandatangan oleh Tertuduh. Jadi bagaimana dia mengatakan dia tidak memberi maklumat tersebut kepada SP3?

Saya juga berpendapat maklumat tersebut boleh diterima di bawah S. 27 Akta Keterangan setelah menimbang hujah yang diberikan oleh Peguambela Tertuduh. Mengenai hujah Peguambela Tertuduh bahawa dadah tersebut tidak berada di tempat tersembunyi dalam kereta tersebut maka dengan demikian s. 27 Akta Keterangan tidak terpakai saya berpendapat tiada merit dalam hujah ini.

A Samada bungkusan tersebut disembunyikan dalam kereta tersebut perlu dilihat pada fakta kes ini. Dalam kes ini bungkusan tersebut dijumpai di bawah tempat duduk pemandu. Tempat tersebut bukannya dibuat untuk penumpang atau sesiapa pun menyimpan barang. Jadi jika barang diletak di tempat tersebut saya
B berpendapat barang itu disembunyikan di situ kerana orang tidak akan menyangka ada barang akan diletak di tempat sedemikian.

[22] We were of the unanimous view that the learned trial judge in the instant appeal was correct in ruling that exh. P22 was admissible and hence formed part of the prosecution's case.

C

[23] The evidence before the learned trial judge showed that the appellant was clearly in possession of the said dangerous drugs and this fact denote that the said dangerous drugs were in his custody and control. He clearly had knowledge of the said
D dangerous drugs. The said dangerous drugs, ie, 937.8 grammes of cannabis was in excess of 200 grammes as provided under s. 37(da)(vi) of the Act. This would trigger the statutory presumption of trafficking as provided in s. 37(da) of the Act. Premised upon these facts, the learned trial judge was correct in
E finding that a *prima facie* case has been made out against the appellant at the conclusion of the case for the prosecution on the offence charged and calling upon him to enter on his defence. The defence was a mere denial. The learned trial judge found that the appellant failed to cast a reasonable doubt and after considering
F all the evidence adduced decided that the prosecution has proved its case beyond reasonable doubt and hence found him guilty and convicted him on the charge of trafficking of the said dangerous drugs. We find no reason to disturb the findings of the learned judge.

G

[24] For the reasons aforesaid, we dismissed the appeal. The conviction and sentence imposed by the High Court were affirmed.

H

I